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August 2, 2000

ADVISORY OPINION NO. 2000-38

Charles E. Warren, Jr.
Classification Specialist (Case Manager)
State of Alabama
Department of Corrections
Limestone Correctional Facility
Post Office Box 66
Capshaw, AL 35742

Conflict Of Interests/Employee Of State Of
Alabama Department Of Corrections
Engaged In Private Practice Of Law.

An employee of the State of Alabama Department of Corrections, who is also licensed to practice law in the State of Alabama, may establish and operate a private practice of law and may represent co-employees and family members of co-employees in criminal misdemeanor cases where incarceration with the Department of Corrections is not an available sentence; provided, that he not represent clients in any matters that fall under the authority or jurisdiction of the Department of Corrections including, but not limited to the representation of felony defendants or in misdemeanor cases which could potentially result in his client's confinement in correctional facilities under the Alabama Department of Corrections' jurisdiction.

An employee of the State of Alabama Department of Corrections, who is also licensed to practice law in the State of Alabama, may enter into a partnership with another attorney(s); provided, the employee of the Department of Corrections not have any involvement in his partners' representation of clients in felony matters that may result in incarceration with the Department of Corrections, nor may he use his position as an employee of the Department of Corrections to provide a benefit to his partners in their representation of felony defendants.

In addition, all work done in conjunction with his private practice of law must be done on his own time, whether it is after hours, weekends, etc.; and provided further, that there is no use of public equipment, facilities, time, materials, human labor or other public property under his discretion or control to assist him in conducting his private law practice or in obtaining clients; and, in addition, that no confidential information obtained in the course of his employment with the Department of Corrections is used to assist him in performing legal work or in obtaining business opportunities.

The requestor of this opinion is further advised to contact the State Personnel Department and the Department of Corrections to determine whether or not there are any personnel rules and regulations that would prohibit his representing a co-employee.

Dear Mr. Warren:

The Alabama Ethics Commission is in receipt of your request for an Advisory Opinion of this Commission, and this opinion is issued pursuant to that request.

QUESTIONS PRESENTED

- 1) May an employee of the State of Alabama Department of Corrections, who is also licensed to practice law in the State of Alabama, represent family members of fellow employees and/or fellow employees in misdemeanor matters in Municipal and District Courts?
- 2) May an employee of the State of Alabama Department of Corrections, who is also licensed to practice law in the State of Alabama, enter into a partnership with another attorney(s) when no felony representation will be undertaken by the firm and when no representation will be undertaken where a violation of felony probation/parole could potentially result in incarceration by the Alabama Department of Corrections?

FACTS AND ANALYSIS

Charles E. Warren, Jr. is employed in a non-supervisory capacity as a Classification Specialist (Case Manager) with the Alabama Department of Corrections. In 1998 he was licensed by the Alabama State Bar Association to practice law in the State of Alabama.

Mr. Warren states that he is frequently asked by co-employees within the Department of Corrections to represent them or a family member in certain legal matters.

Mr. Warren states that he has previously contacted the Alabama State Bar Association, and has discussed the matter with various district attorneys and judges in the areas in which he is interested in practicing law.

Mr. Warren states that he has previously worked on civil cases for employees, and has been asked in the past to represent family members of DOC employees in certain criminal cases.

In the information provided to us by Mr. Warren, there are several instances where some degree of contact or civil representation has already taken place, thereby rendering it not

prospective in nature. However, based on the question as presented, the Commission will address the issue as relates to future representation by Mr. Warren in misdemeanor cases.

The Alabama Ethics Law, Code of Alabama, 1975, Section 36-25-1(23) defines a public employee as:

“(23) PUBLIC EMPLOYEE. Any person employed at the state, county, or municipal level of government or their instrumentalities, including governmental corporations and authorities, but excluding employees of hospitals or other health care corporations including contract employees of those hospitals or other health care corporations, who is paid in whole or in part from state, county or municipal funds. For purposes of this chapter, a public employee does not include a person employed on a part-time basis whose employment is limited to providing professional services other than lobbying, the compensation for which constitutes less than 50 percent of the part-time employee's income.”

Section 36-25-1(8) defines a conflict of interest as:

“(8) CONFLICT OF INTEREST. A conflict on the part of a public official or public employee between his or her private interests and the official responsibilities inherent in an office of public trust. A conflict of interest involves any action, inaction, or decision by a public official or public employee in the discharge of his or her official duties which would materially affect his or her financial interest or those of his or her family members or any business with which the person is associated in a manner different from the manner it affects the other members of the class to which he or she belongs.”

Section 36-25-5(a) states:

“(a) No public official or public employee shall use or cause to be used his or her official position or office to obtain personal gain for himself or herself, or family member of the public employee or family member of the public official, or any business with which the person is associated unless the use and gain are otherwise specifically authorized by law. Personal gain is achieved when the public official, public employee, or a family member thereof receives, obtains, exerts control over, or otherwise converts to personal use the object constituting such personal gain.”

Section 36-25-5(c) states:

“(c) No public official or public employee shall use or cause to be used equipment, facilities, time, materials, human labor, or other public property under his or her discretion or control for the private benefit or business benefit of the public official, public employee, any other person, or principal campaign committee as defined in Section 17-22A-2, which would materially affect his or her financial interest, except as otherwise provided by law or as provided pursuant to a lawful employment agreement regulated by agency policy.”

Section 36-25-5(e) states:

“(e) No public official or public employee shall, other than in the ordinary course of business, solicit a thing of value from a subordinate or person or business with whom he or she directly inspects, regulates, or supervises in his or her official capacity.”

Section 36-25-8 states:

"No public official, public employee, former public official or former public employee, for a period consistent with the statute of limitations as contained in this chapter, shall use or disclose confidential information gained in the course of or by reason of his or her position or employment in any way that could result in financial gain other than his or her regular salary as such public official or public employee for himself or herself, a family member of the public employee or family member of the public official, or for any other person or business."

On June 7, 2000, the Commission rendered Advisory Opinion No. 2000-27. That opinion held that:

“A Financial Support Social Worker with the Dale County Department of Human Resources, who opens a practice of law, may not represent clients in any matters that fall under the authority of the State or County Departments of Human Resources or with whom she has had business dealings through the County Department of Human Resources, or who are otherwise clients of the County DHR.”

Also on June 7, 2000, the Commission rendered Opinion No. 2000-28, which held that:

“A Deputy Commissioner for the State Department of Human Resources in charge of Field Administration may not represent clients in any matters that fall under the authority of the state or county Departments of Human Resources or with whom he has had business dealings through either the state or county Departments of Human Resources or individuals who are otherwise clients of the Department of Human Resources.”

While these opinions are on point to the question currently pending before the Commission, they can be differentiated in the respect that Mr. Warren is asking whether or not he may represent employees and their family members in legal matters, and not whether or not he may represent clients of DOC.

It is clear that it would present a conflict of interests for Mr. Warren to represent individuals in criminal matters that may result in his client's incarceration with the Department of Corrections. Therefore, it would be inappropriate for Mr. Warren to represent individuals in felony cases and those misdemeanor cases which could result in incarceration by the Department of Corrections.

It would also be a conflict of interests for Mr. Warren to represent individuals incarcerated by the Department of Corrections.

The Alabama Ethics Law would not prohibit Mr. Warren from representing employees of the Department of Corrections or their family members in misdemeanor cases that bear no relation to his employment with the Department of Corrections. However, this representation must be done on his own time, whether that be after hours, weekends, etc. In addition, Mr. Warren should be cautioned that, should he undertake representation of a fellow employee of DOC or a family member, he may not discuss that case, work on the case, etc., while being paid by the Department of Corrections. He should make it clear to those individuals seeking his legal assistance who contact him at his office in the Department of Corrections, that this would be inappropriate, and that he should be contacted at either his private office or his home.

In addition, an employee of the State of Alabama Department of Corrections may enter into a partnership with other attorneys; provided, that the Department of Corrections employee not use his position to assist his partners in any representation of felony defendants they may undertake, either through the use of confidential information or by special treatment in Department of Corrections facilities, etc.

Based on the facts as provided and the above law, an employee of the State of Alabama Department of Corrections, who is also licensed to practice law in the State of Alabama, may establish and operate a private practice of law and may represent co-employees and family

members of co-employees in criminal misdemeanor cases where incarceration with the Department of Corrections is not an available sentence, provided:

- 1) that he not represent clients in any matters that fall under the authority or jurisdiction of the Department of Corrections including, but not limited to the representation of felony defendants or in misdemeanor cases which could potentially result in his client's confinement by the Alabama Department of Corrections;
- 2) that he not have any involvement in his partners' representation of clients in felony matters that may result in incarceration with the Department of Corrections;
- 3) that he not use his position as an employee of the Department of Corrections to provide a benefit to his partners in their representation of felony defendants;
- 4) that all work done in conjunction with his private practice of law must be done on his own time, whether it is after hours, weekends, etc.;
- 5) that there is no use of public equipment, facilities, time, materials, human labor or other public property under his discretion or control to assist him in conducting his private law practice or in obtaining clients; and,
- 6) that no confidential information obtained in the course of his employment with the Department of Corrections is used to assist him in performing legal work or in obtaining business opportunities.

The requestor of this opinion is further advised to contact the State Personnel Department and the Department of Corrections to determine whether or not there are any personnel rules and regulations that would prohibit his representing a co-employee.

CONCLUSION

An employee of the State of Alabama Department of Corrections, who is also licensed to practice law in the State of Alabama, may establish and operate a private practice of law and may represent co-employees and family members of co-employees in criminal misdemeanor cases where incarceration with the Department of Corrections is not an available sentence; provided,

that he not represent clients in any matters that fall under the authority or jurisdiction of the Department of Corrections including, but not limited to the representation of felony defendants or in misdemeanor cases which could potentially result in his client's confinement by the Alabama Department of Corrections.

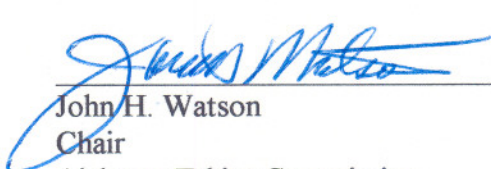
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The requestor of this opinion is further advised to contact the State Personnel Department and the Department of Corrections to determine whether or not there are any personnel rules and regulations that would prohibit his representing a co-employee.

AUTHORITY

By 3-0 vote of the Alabama Ethics Commission on August 2, 2000.



John H. Watson
Chair
Alabama Ethics Commission